

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

**DONNA CURLING, ET AL.,
Plaintiffs,**

v.

**BRAD RAFFENSPERGER, ET AL.,
Defendants.**

Civil Action No. 1:17-CV-2989-AT

**DECLARATION OF LOWELL FINLEY IN SUPPORT OF
CURLING PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

I, Lowell Finley, hereby declare as follows:

1. I was the co-founder and co-director of Voter Action, a nonpartisan election-integrity group, and I currently practice law in California, specializing in constitutional issues, elections, officeholder ethics, and campaign finance. I have successfully advocated for secure election systems in several states, including California, Florida, Ohio, Colorado, Arizona, New Mexico, Nevada, and Pennsylvania. I hold a J.D. from the University of California, Berkeley School of Law.

2. I have professional experience assisting California in transitioning most voting away from direct recording electronic (DRE) voting machines to hand-marked paper ballots read by optical scanners. I am a past

member of the United States Election Assistance Commission's Standards Board established under the Help America Vote Act.

3. From 2007 until 2014, I served as California's Deputy Secretary of State for Voting Systems Technology and Policy. For three years during that time, from 2011 to 2014, I also served as Chief Counsel to the Office of the California Secretary of State. In those capacities, I oversaw California's voting system testing program and co-authored California's first set of comprehensive voting system regulations. My most recent service to the State of California was as Deputy Attorney General for the California Department of Justice in the Government Law Section from 2015 to 2016.

4. A more extensive overview of my credentials pertaining to election management and technologies is attached as an Exhibit 1.

5. I make this declaration of my own personal knowledge, and I am competent to testify to the matters set forth herein.

Relevant Experience

6. In 2007, as the Deputy Secretary of State for Voting Systems Technology and Policy, I oversaw California's top-to-bottom review of the state's electronic voting systems by computer security experts from many top universities, including the University of California, Princeton, Rice and

Stanford. The review resulted in the de-certification of several DRE systems, including a version of the AccuVote TSX system currently used in Georgia, based primarily on severe security vulnerabilities uncovered during the review.¹ An earlier version of the TSX which, like the version still used in Georgia today, lacked a voter-verifiable paper record of votes cast, had previously been decertified in California in 2004.²

7. As a result of my experience in California, I am familiar with election administration of both optical scan paper ballot and direct recording electronic voting systems. I also have personal experience overseeing the

¹ Findings of the UC Red Team testing on the Diebold Election Systems Incorporated Voting System, *available at* <https://votingsystems.cdn.sos.ca.gov/oversight/ttbr/red-diebold.pdf> (testing Diebold GEMS Server, AccuVote TSX, AccuVote Optical Scanners, and other equipment and finding multiple serious vulnerabilities, including some that meant the “most malicious actions taken by attackers would not be traceable.”); *see also* J. Calandrino et al., Source Code Review of the Diebold Voting System (July 20, 2007), *available at* <https://votingsystems.cdn.sos.ca.gov/oversight/ttbr/diebold-source-public-jul29.pdf>.

² John Schwartz, *High-Tech Voting System is Banned in California*, NY Times (May 1, 2004), *available at* <https://www.nytimes.com/2004/05/01/us/high-tech-voting-system-is-banned-in-california.html>; *see also* Stuart Pfeifer, *State Blocks Digital Voting*, LA Times (May 1, 2004), *available at* <https://www.latimes.com/archives/la-xpm-2004-may-01-me-machines1-story.html> (“In the most drastic action announced Friday, Shelley banned Diebold’s AccuVote-TSx from use in the November election, meaning that four counties that own the equipment -- San Diego, San Joaquin, Solano and Kern -- will have to find another way to collect votes in November. Officials in those counties said they would probably use paper ballots on which voters mark their choices with ink.”).

transitioning of large, highly populated cities and counties from voting on direct recording electronic voting machines to voting on optically scanned paper ballots.

Decertification of Direct Recording Electronic Voting Systems in California

8. In 2007, California's elected Secretary of State undertook an intensive, top-to-bottom review of the state's electronic voting systems, conducted by several teams of computer scientists. The goal of the review was to determine whether currently certified voting systems provide acceptable levels of security, accessibility, ballot secrecy, accuracy and usability under federal and state standards.

9. Many of the direct recording electronic voting systems – including the Diebold AccuVote TSX system currently used in Georgia – did not meet acceptable levels.

10. The decertification order for the Diebold system included multiple findings of severe vulnerabilities, including the following:

11. A. “[T]he Diebold Red Team members, without accessing Diebold source code, were able to violate the physical security of every aspect of the TSx direct recording electronic voting machine under polling place conditions using tools found in a typical office; and . . . identified attacks on

the TSx direct recording electronic voting machine that could allow a voter to delete all electronic records of ballots cast up to the time of the attack, including backup records.”

B. “[T]he Diebold Source Code Review Team found that the Diebold software contains vulnerabilities that could allow an attacker to install malicious software on voting machines and on the election management system, which could cause votes to be recorded incorrectly or to be miscounted, possibly altering election results; and . . . found that the Diebold system is susceptible to computer viruses that propagate from voting machine to voting machine and even voting machines to the election management system, which could allow an attacker with access to only one voting unit or memory card to spread malicious code, between elections, to many, if not all, of a county’s voting units; and . . . found that due to these shortcomings some threats would be difficult, if not impossible, to remedy with election procedures.”

12. Based on the results of the review, California decertified the Diebold AccuVote TSX direct recording electronic voting machines and several other manufacturers’ DRE voting systems. As a result, dozens of

counties that had relied on Diebold, Sequoia, and ES&S DREs as their primary means of in-person, polling place voting shifted before the next election to having most voters mark their selections by hand on paper ballots to be scanned and tabulated by optical scanning machines. The Secretary of State permitted continued use of their DREs to provide accessible voting to persons with disabilities, but only if electronic vote tallies were confirmed through a hand recount of the voter verifiable paper audit trail (VVPAT) printed by the DREs. As previously noted, Georgia's TSX machines are not equipped with VVPAT printers, making this back-up security step unavailable.

Feasibility of Hand-Marked Paper Ballots

13. Based on my experience in California, it is my opinion that a switch from voting on DREs to voting on hand-marked paper ballots for the vast majority of voters is absolutely feasible in Georgia.

14. First, it is my understanding that the upcoming 2019 elections in Georgia are local and municipal rather than statewide (or national) elections. Such "off-year" elections are the ideal time to convert to hand marked paper ballots. Local and municipal elections have lower levels of voter participation and typically involve shorter ballots. Due to the absence of state legislative

and federal congressional contests, there are fewer contests facing each voter and fewer different ballot styles for election administrators to print and manage. These are ideal conditions for poll workers and administrators, as well as voters, to gain familiarity with the new system.

15. Second, many sources of institutional knowledge are available to assist Georgia in its return to hand-marked paper ballots. If Georgia's officials believe that they can benefit from the help of others, there are many experienced officials and former officials available across the United States who have made the transition to paper ballots after years of administering elections on DREs. Georgia may have been one of the first states to implement DREs, but it would not be the first to move back to paper ballots.

16. In conclusion, during my time in office in California, we determined through scientific study over a decade ago that several DRE voting systems, including the AccuVote TSX still used in Georgia, were not secure, reliable, or verifiable, and that their continued use posed an unacceptable risk to the integrity of elections in the state. After the Secretary of State withdrew approval for those DRE voting systems, dozens of counties, including several with millions of registered voters, quickly and successfully transitioned to hand marked, optically scanned ballots for most voters. It is my opinion that

a rapid transition to hand-marked paper ballots and optical scanners is equally feasible for Georgia, and equally essential to secure the state's elections.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: May 30, 2019
Berkeley, California


Lowell Finley

EXHIBIT A

Lowell Finley
912 Mendocino Ave.
Berkeley, California 94707

Professional Experience

DEPUTY ATTORNEY GENERAL, CALIFORNIA DEPARTMENT OF JUSTICE 2015-2016
San Francisco, California

CHIEF COUNSEL, OFFICE OF THE CALIFORNIA SECRETARY OF STATE 2011-2014
CALIFORNIA DEPUTY SECRETARY OF STATE, VOTING SYSTEMS TECHNOLOGY AND POLICY 2007-2014
Sacramento, California

SOLE PRACTITIONER
1998-2006, 2015

Berkeley, California

Specializing in constitutional, voting system integrity, election, campaign finance, redistricting, and officeholder conflict of interest advice and litigation. Representative clients: Voter Action, Verified Voting, Oakland Mayor Jerry Brown, California Assembly Majority Leader Wilma Chan, San Francisco Supervisor Aaron Peskin; Napa County Supervisor Mike Rippey, San Francisco Assessor Mabel Teng, San Francisco Treasurer and mayoral candidate Susan Leal, California Teachers Association, Center for Voting and Democracy, City of Alameda, Committee to Save the Central Freeway, Equal Justice Society, Nature Conservancy of California, Responsible Cultivation Santa Cruz, San Francisco Foundation Community Involvement Funds, Sierra Business Council, Tsunami Fund, Vanguard Public Foundation.

PARTNER 1992-1998

Altshuler, Berzon, Nussbaum, Berzon & Rubin, San Francisco, California

Specializing in constitutional, election, campaign finance, redistricting, and officeholder conflict of interest advice and litigation. Representative clients: AFL-CIO, California State Senator Patrick Johnston, California Teachers Association, City of Oakland, Clinton-Gore '92 & '96, Public Media Center, San Francisco mayoral candidate Roberta Achtenberg, Your ProChoice Voter Guide.

PARTNER 1985-1992

Remcho, Johansen & Purcell, San Francisco, California

Specializing in constitutional, election, campaign finance, redistricting, and officeholder conflict of interest advice and litigation. Representative clients: California Assembly Democratic Caucus, California Secretary of State March Fong Eu, California State Senate, California Teachers Association, California Trial Lawyers Association, Legislature of the State of California.

LAW CLERK 1983-1985

Rose Elizabeth Bird, Chief Justice of California, San Francisco, California

Research and drafting of opinions on civil law; supervised civil law research staff.

Education

JURIS DOCTOR 1982

University of California School of Law (Boalt Hall) Berkeley, California

BACHELOR OF ARTS 1978

University of California, Santa Cruz Santa Cruz, California

Graduated with Honors in Politics major.

Publications

The Rules of the Game: An Election Year Guide for Nonprofit Organizations with Gregory L. Colvin, Esq., 1996: The Alliance for Justice, Washington, D.C.

Seize the Initiative with Gregory L. Colvin, Esq., 1996: The Alliance for Justice, Washington, D.C.

Published Political Law Decisions

- Brown v. Fair Political Practices Commission, 84 Cal.App.4th 137 (2000) (agency decision disqualifying elected mayor of strong-mayor charter city from downtown redevelopment decisions due to financial conflict of interest reversed as inconsistent with city charter's separation of powers)
- Cobb v. State Canvassing Board, 140 P.3d 498 (N.M. 2006) (unconstitutionality of statute giving governor, secretary of state, and chief justice unbridled discretion in setting amount of money candidate must deposit to trigger a recount)
- Bennett v. Yoshina, 140 F.3d 1218 (9th Cir. 1998) (legal consequences of ballots returned blank on a state constitutional convention question)
- Hawaii AFL-CIO v. Yoshina, 935 P.2d 89 (Haw. 1997) (same as above)
- McIntyre v. Ohio Elections Commission, 514 U.S. 334 (1995) (First Amendment protection of anonymous political speech)
- Smith v. Superior Court (Degnan, Real Party in Interest), 31 Cal.App.4th 205 (1994) (elected officeholder financial conflict of interest)
- Cardona v. Oakland Unified School District, 785 F.Supp. 837 (N.D. Cal. 1992) (redistricting)
- Wilson v. Eu, 1 Cal.4th 707 (1992) (redistricting of California congressional and state legislative districts)
- Heuning v. Eu, 231 Cal.App.3d 766 (1991) (two-thirds vote required for implied legislative amendment of Political Reform Act of 1974, adopted through ballot initiative process)
- Service Employees International Union v. Fair Political Practices Commission, 721 F.Supp. 1172 (E.D. Cal. 1989), aff'd 955 F.2d 1312 (9th Cir. 1992) (unconstitutionality of fiscal year scheme of campaign contribution limits)
- California Trial Lawyers Association v. Eu, 200 Cal.App.3d 351 (1988) (constitutional restriction of ballot initiatives to a single subject)

Experience and Accomplishments

- Featured in *California Lawyer* cover story, "This Democracy is Experiencing Technical Difficulties—Please Stand By," August 2006.
- Secured court order in 2004, blocking newly-elected California Governor Arnold Schwarzenegger from soliciting or using campaign contributions to repay illegal \$4 million personal loan to his campaign committee.
- Helped to brief several cases on the redistricting of California congressional and state legislative districts before the California and United States Supreme Courts, representing the California Legislature.
- Advised the City Council of the multi-ethnic, multi-racial City of Oakland, California on its redistricting for the 1990s.

- Litigated successful employment class action against The Regents of the University of California on behalf of University of California faculty members, resulting in \$11 million settlement.
- Served as campaign finance law counsel to the nonprofit Public Media Center in its unprecedented 1994 statewide California educational campaign to reveal tobacco industry funding for a “wolf in sheep’s clothing” ballot measure on smoking, a campaign widely credited with turning voters against the measure.
- Co-authored a successful *amicus curiae* brief in a U.S. Supreme Court case that reaffirmed the constitutional right of individual citizens to engage in anonymous political speech.
- Served as regional campaign counsel for Clinton-Gore in 1992 and 1996.
- Successfully sued an Orange County, California candidate for hiring uniformed security guards to intimidate Hispanic voters at the polls in the November, 1988 election.
- President, California Political Attorneys Association (1992).